IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 19821 of 2007(I)

PETITIONER:

K.M. BASHEER,
SECRETARY (UNDER SUSPENSION), MANJERI MUNICIPALITY,
MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:

1. **STATE OF KERALA,**
   REP. BY THE PRINCIPAL SECRETARY, LOCAL SELF GOVT.
   DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE MANJERI MUNICIPALITY,**
   MANJERI, MALAPPURAM DISTRICT, REP. BY ITS
   CHAIRPERSON.

***ADDL.R3 IS IMPLEADED:**

R3. THE SECRETARY IN CHARGE,
MANJERI MUNICIPALITY,
MANJERI, MALAPPURAM DISTRICT.

(*ADDL.R3 IS IMPLEADED AS PER ORDER DTD. 11/07/2007 IN I.A.NO.9417/07)

BY ADV. SRI.K.K.CHANDRAN PILLAI for Addl.R3
BY GOVERNMENT PLEADER SRI. P. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON 07/09/2007 DELIVERED THE FOLLOWING:

WPC.NO.19821/2007 I

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER DTD. 07/08/2006 TRANSFERRING THE PETITIONER TO MANJERY MUNICIPALITY.**

EXT.P2: **COPY OF THE SUSPENSION ORDER DTD. 25/06/2007.**

EXT.P3: **COPY OF THE ORDER DTD. 01/12/2006.**

EXT.P4: **COPY OF THE COVERING LETTER NO.G.2093/06 DTD. 07/08/2006 AND THE PERFORMANCE AUDIT REPORT.**

EXT.P5: **PHOTOGRAPHS SHOWING THE DHARNA CONDUCTED IN THE OFFICE OF THE DYFI.**

/TRUE COPY/

P.S.TO JUDGE

KSS

ANTONY DOMINIC, J.

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W.P.(C) No. 19821 OF 2007 I
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Dated this the 7th September, 2007

J U D G M E N T

This writ petition is filed seeking to quash Ext. P2 order placing the petitioner under suspension and for other consequential reliefs.

2. While working as the Secretary of Malappuram Municipality, by Ext. P1 order dated 7-8-2006 petitioner was transferred and posted to Manjeri Municipality. Pursuant to Ext. P1 petitioner joined duty as Secretary on 14-8-2006 and while continuing so, he was placed under suspension by Ext. P2 order dated 25-6-2007. A reading of Ext. P2 shows that the performance audit report for the period from 1-10-2005 to 31-3-2006 disclosed dereliction of duty on the part of the then Secretary of the Municipality. It also states that the performance audit report for the period from 1-10-2005 to 31-10-2006 was not discussed in detail in the Municipal Council that though minutes of the meeting have been recorded, proper agenda was not being maintained, that copy of the minutes were not

being given in time, that resolutions taken on various occasions were being given together and that there was no system of obtaining acknowledgement of receipt from members of the council. It is also stated that towards arrears of rent alone, Rs.5,20,453/- was due to be collected. Ext. P2 states that these lapses amounted to dereliction of duty on the part of the petitioner as also the previous Secretary and therefore the petitioner was placed under suspension by this order.

3. Impugning Ext. P2 order, the writ petition has been filed contending that Ext. P2 is a malafide order issued on account of political reasons and that under the rules, preparation of the minutes of the meeting by the council is mainly the responsibility of the Chairperson and not that of the Secretary. It is also stated that it is to satisfy the members of the DYFI, that the petitioner was placed under suspension as they were not happy with the resolution of the Municipality, regarding the registration of contractors. It is also stated that the suspension is ordered relying on the performance audit report for the period from 1-10-2005 to 31-3-2006 during which period the petitioner was not

in office.

4. On behalf of the 1st respondent counter affidavit has been filed wherein so far as the petitioner is concerned it is stated that he was placed under suspension based on the report of the said performance audit team which had conducted an enquiry pursuant to an order passed by the Secretary to the Department of Local Self Government, Government of Kerala. It is stated that the said report disclosed dereliction of duty on the part of the petitioner. The 1st respondent denies the allegation that there were political influence or motivation behind the suspension of the petitioner. The additional 3rd respondent has filed a counter affidavit, in which they support the petitioner. Petitioner has also filed a reply affidavit refuting the allegations made against the petitioner in the counter affidavit filed by the 1st respondent.

5. I have heard the counsel for the petitioner and the respondents.

6. Before I venture to examine the merits of the contentions raised by the petitioner, I should bear in

mind the broad parameters within which this Court is to examine the validity of an order of suspension. This has been succinctly stated in the judgment in ***Anilkumar v. State of Kerala*** (2002 (2) KLT 101) in the following terms:

> "What is under challenge is a suspension order. It can be successfully challenged under Art. 226 of the Constitution of India if only the same has been issued without jurisdiction. Assuming everything that is stated in the suspension order is correct, still the suspension is unwarranted, this Court can interfere with it. A suspension order cannot be attacked on the ground that the facts stated therein are not correct or the conclusions on the facts are improper. Such contentions are available only before the appellate authority. A court exercising the power of judicial review may interfere with a decision if on the given set of facts, no man in his senses could arrive at such a decision. The validity of the suspension order has to be tested within the above parameters."

In this case there is no challenge that Ext. P2 order is issued by an authority lacking jurisdiction. Therefore, I should proceed on the assumption that the order has been issued by an authority having jurisdiction. Then the question is whether Ext. P2 warrants interference within the parameters indicated

above.

7. The contentions raised by the learned counsel for the petitioner against Ext. P2 are mainly relying on Rules 6, 8, 14(3) and 14(6) of the Kerala Municipality (Procedure for Meeting of Council) Rules, 1995. According to him preparation of agenda has to be in consultation with the Chairperson and therefore if there is impropriety in the preparation of agenda the primary responsibility rests with the Chairperson. It is stated that convening of meeting is the responsibility of the Chairperson and therefore if the audit report was not discussed in the council it is the Chairperson who is to be held responsible in terms of Rule 8 of the aforesaid rules. It is also contended that Rule 14(3) requires the Secretary to prepare draft of the minutes of the meeting and submit it to the Chairman and that in terms of sub-rule (6) a copy is to be supplied to the members. Relying on Rule 14 it is contended that the Secretary's responsibility is only to supply copy to the members and that there is no requirement that the copy should be supplied immediately after each meeting. It is also stated that

there is no requirement to obtain acknowledgement from the members of the council. It is contended that regarding the difference in rates between tenants and the arrears to be collected, petitioner cannot be penalised as it pertains to previous periods also. On this basis, it is contended that Ext. P2 does not disclose a prima facie case against the petitioner to keep him under suspension.

8. On the plea that Ext. P2 is vitiated due to malafides, the contention of the petitioner is that the said order was issued to please the DYFI members who were agitating against the decision of the council of the Municipality. As far as this plea is concerned, the petitioner has not made any specific allegation against anybody, nor has the petitioner impleaded the party against whom malafides have been alleged. In such circumstances, this Court will not be justified in taking cognizance of the allegations of malafides.

9. In so far as the other grounds on which Ext. P2 is impugned relying on the rules mentioned above, I should notice that none of these grounds have been pleaded in the writ petition. That apart, these are

contentions which cannot be appreciated at this stage of the proceedings. On the other hand, these are grounds available before an appellate authority or defences available to a delinquent in the disciplinary proceedings.

10. A reading of Ext. P2 prima facie discloses that grounds do exist to place the petitioner under suspension and I cannot, at least on the materials, say that the grounds relied on against the petitioner are perverse, warranting interference under Article 226 of the Constitution of India. The grounds urged, as already stated above, are available only in an appeal before the statutory authority or in the disciplinary proceedings.

I do not find any merit in this writ petition and the writ petition is only to be dismissed.

ANTONY DOMINIC
JUDGE

jan/-